

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-130-S

IN RE: Joint Application for Approval of the Sale)
of Assets and Transfer of Facilities,)
Territory, and Certificate of Public)
Convenience and Necessity from Synergy)
Utilities, L.P. to South Carolina Water)
Utilities, Inc. _____)

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between the South Carolina Office of Regulatory Staff (“ORS”), Synergy Utilities, L.P. (“Synergy”), South Carolina Water Utilities, Inc. (“SCWU”), the City of Orangeburg (“City”), and the Northwood Estates Homeowner Association, Inc. (“HOA”) (collectively referred to as the “Parties” or sometimes individually as a “Party”).

WHEREAS, Synergy is a South Carolina limited partnership that owns and operates wastewater treatment facilities providing wastewater service to the public for compensation in portions of Lexington, Fairfield, Orangeburg, and Richland Counties and is a “public utility” as defined in S.C. Code Ann. § 58-5-10(4);

WHEREAS, SCWU is a corporation, duly organized and existing under the laws of the State of Delaware and is authorized to do business in the State of South Carolina;

WHEREAS, SouthWest Water Company (“SouthWest”), a Delaware limited liability company, indirectly owns 100% of SCWU and, on a consolidated basis, SouthWest operates water and sewer utility systems serving approximately 206,000 connections in six states;

WHEREAS, on April 21, 2021, Synergy and SCWU (collectively, the "Joint Applicants") filed an application pursuant to 10 S.C. Code Ann. Regs. 103-504 and other applicable rules and regulations for approval of a sale of assets, including sewer facilities, territories, and certificates of public convenience and necessity, from Synergy to SCWU;

WHEREAS, on May 13, 2021, and May 27, 2021, the HOA and the City, respectively, petitioned to intervene in the above-referenced proceeding, which petitions were granted by the Public Service Commission of South Carolina ("Commission");

WHEREAS, ORS is a party of record to the above-referenced proceeding and is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code Ann. § 58-4-10(B);

WHEREAS, the Parties to this Settlement Agreement are the only parties of record in the above-captioned docket;

WHEREAS, the Parties have varying legal positions regarding the issues in this case;

WHEREAS, the Parties have engaged in discussions to determine if a settlement of this proceeding would be in their best interest; and,

WHEREAS, the Parties have determined that their interests and the public interest would be best served by settling the above-captioned case under the terms and conditions set forth below:

1. The Parties agree to stipulate into the record before the Commission the pre-filed testimony and exhibits (collectively, the "Stipulated Testimony") of the following witnesses without objection, change, amendment, or cross-examination with the exception of changes comparable to those that would be presented via an errata sheet or through a witness noting a correction consistent with this Settlement Agreement. The Parties also reserve the right to engage



in redirect examination of witnesses as necessary to respond to issues raised by the examination of their witnesses, if any, by the Commission or by any late-filed testimony.

Joint Applicants' Witnesses

- a. Keith G. Parnell (Direct and Rebuttal)
- b. Craig Sorensen (Direct and Rebuttal)

HOA's Witness

- a. Barbara Johnson Williams (Direct)

ORS's Witness

- a. Dawn M. Hipp (Direct and Surrebuttal (subject to the below revisions))

2. ORS agrees to withdraw Witness Hipp's surrebuttal testimony as filed with the Commission on September 7, 2021, and file in its place the revised surrebuttal testimony attached as Attachment A to this Settlement Agreement. The Parties agree to offer no other evidence in the proceeding other than the stipulated testimony and exhibits and this Settlement Agreement unless the additional evidence is to support the Settlement Agreement, consists of changes comparable to that which would be presented via an errata sheet or through a witness noting a correction or clarification, consists of a witness adopting the testimony of another if permitted by the Commission, or is responsive to issues raised by examination of the Parties' witnesses by Commissioners or by late-filed testimony. The Parties agree that nothing herein will preclude each party from advancing its respective positions in the event that the Commission does not approve the Settlement Agreement.

3. The Parties hereby stipulate to the following terms, which if adopted by the Commission in its Order on the merits of this proceeding, will result in terms, and/or conditions that are adequate, just, reasonable, and supported by the evidence of record of this proceeding.



- a. Synergy, SCWU, and the City agree that, upon transfer of the Synergy Sewer Assets to SCWU, SCWU shall transfer to the City of Orangeburg Department of Public Utilities ("DPU") at no cost and the City and/or DPU shall accept from SCWU at no cost, the Northwood Sewer System. The City and/or DPU's obligation to accept the system shall be contingent on it obtaining the necessary funding to make necessary repairs to the system and all necessary approvals from governmental agencies and bodies, including the Orangeburg City Council.
- b. In the event the transfer of the Northwood collection system and customers is not approved by the City of Orangeburg within 90 days after the Commission Order in this Docket, SCWU shall complete an independent engineering assessment and feasibility study of the Northwood collection system within 12 months from the date of closing. The independent engineering assessment and feasibility study shall be filed with the Commission, with copies provided to ORS and HOA, within 30 days of completion of the independent engineering assessment and feasibility study. The Parties to this Settlement Agreement shall have an opportunity to review and comment on the independent engineering assessment and feasibility study. ORS retains the right to review and make recommendations related to SCWU's requests for cost recovery related to independent engineering assessment and feasibility study in future base rate proceedings.
- c. In the event the transfer of the Northwood collection system and customers is not approved by the City of Orangeburg within 90 days after the Commission Order in this Docket, SCWU shall begin improvement activity on the collection system serving the Northwood Estates subdivision within 12 months of completion of the collection system and feasibility study, unless otherwise directed by the Commission. SCWU shall file with the Commission, with copies provided to ORS and HOA, an estimated project timeline for completion and provide quarterly progress reports that detail the specific improvements, location of improvements and a breakdown of costs incurred. ORS retains the right to review and make recommendations related to SCWU's requests for cost recovery related to any collection system improvements in future base rate proceedings.
- d. SCWU agrees not to recover or to seek to recover from its customers, in this or any future proceeding, any acquisition premium (goodwill) costs or transaction costs associated with the sale of assets, facilities, territories and certificates of public convenience and necessity, or any other costs incurred in connection with the consummation of the Asset Purchase Agreement ("Agreement") or the process of developing and obtaining approval of the Application. The Parties acknowledge and agree that the term Acquisition Adjustment or Goodwill is defined by the National Association of Regulatory Utility Commissioners' ("NARUC") published 1996 Uniform System of Accounts ("USOA") for Class A Wastewater Utilities, account 114 – Utility Plant Acquisition Adjustments and that any amount booked to account 114 – Utility Plant Acquisition Adjustments will be written off to expense and excluded from cost of service. The Parties also agree that SCWU shall use the accounting instructions prescribed in Section 21 Utility Plant – Purchased to record the acquisition.



- e. ORS reserves the right to review for reasonableness all financial aspects of this acquisition, the Agreement, and transfer including transition costs in any future proceedings.
- f. Should SCWU seek rate recovery of any expenses related to the employment of the current shareholders of Synergy in any future proceeding, ORS reserves the right to review and make recommendations related to the expenses in those future proceedings.
- g. The Parties agree the SouthWest Cost Allocation Manual may be reviewed for prudence in a future proceeding, and ORS is not precluded from addressing the reasonableness of the SouthWest Cost Allocation Manual in any future proceeding for any current or future regulated SouthWest subsidiary.
- h. SCWU shall not lend cash or other capital directly to SouthWest or any other subsidiary entity of SouthWest except for routine and prudent cash management practices in accordance with Attachment B to this Settlement Agreement.
- i. SCWU shall not be the guarantor of any debt of SouthWest or any other SouthWest affiliate unless the debt is incurred for purposes specific to the SCWU system and operations.
- j. SCWU will provide customers with the service enhancements listed in Item 10 of the Application within one-hundred twenty (120) days of the acquisition closing. These service enhancements include access to a 24-hour customer service team and online credit card bill pay.
- k. SCWU agrees to not file a general rate case that would impact customers located in the Synergy service territory prior to twelve (12) months after the Commission Order in this Docket, such that new rates will not be effective prior to eighteen (18) months after the Commission Order in this Docket, except where necessary due to unforeseen extraordinary economic or financial conditions which may include, but not be limited to, changes in tax rates.
- l. SCWU agrees to continue to cap the maximum level of the DPU Commodity/Capacity Charge billed to Northwood customers at 400 gallons per day. SCWU has the opportunity to request the cessation of the DPU Commodity/Capacity Charge billing cap during of the next general rate case that would impact customers located in the Synergy service territory. SCWU agrees that it will not seek recovery of the unrecovered wholesale DPU treatment expenses from customers.
- m. SCWU agrees to provide ORS with access to all books and records pertaining to affiliated transactions.
- n. SCWU shall maintain its accounting books and records in accordance with the NARUC USOA.



- o. SCWU agrees to maintain separate accounting books and records for the three subdivisions (Synergy, Harbor Island, and T.J Barnwell) owned and managed by SCWU unless otherwise approved by the Commission.
- p. SCWU agrees not only to maintain separate books and records by subdivisions, but also to maintain separate accounting books and records by water and wastewater utility service unless otherwise ordered or directed by the Commission.
- q. SCWU agrees that in its next base rate filing it will comply with Commission Order No. 2018-308, in Docket No. 2017-381-A, and include the tax impacts of the 2017 Tax Cuts and Jobs Act and/or the most current tax laws applicable as a component of the Company's cost of service.
- r. SCWU agrees to maintain performance bonds currently on file with the Commission in the amounts of \$350,000 for sewer operations and \$350,000 for water operations in compliance with S.C. Code Ann. § 58-5-720.
- s. SCWU will maintain its customer service at no less than current levels and monitor service and performance following the sale to ensure that customer service levels do not degrade for reasons attributable to the sale.
- t. SCWU will maintain the environmental monitoring, operations, and maintenance programs at or above current levels.
- u. Conditioned upon and expressly subject to the terms and conditions set forth in this Settlement, ORS, the City, and HOA agree to notify the Commission they do not oppose SCWU's and Synergy's request for Commission approval of the Agreement, for permission for SCWU to operate the sewer system currently owned and operated by Synergy under the schedules of rates and charges currently approved by the Commission, for expedited approval of the Application, and for waiver of a formal hearing.

4. The Parties agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission as a fair, reasonable, and full resolution of the above-captioned proceeding. The Parties agree to use reasonable efforts before any reviewing court in the event of appeal to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein; however, ORS shall not utilize social media to defend a Commission order.

5. The Parties agree that signing this Settlement Agreement, (a) will not constrain, inhibit, impair, or prejudice their arguments or positions held in future or collateral proceedings;



(b) will not constitute a precedent or evidence of acceptable practice in future proceedings; and (c) will not limit the relief, rates, recovery, or rates of return that any Party may seek or advocate in any future proceeding. The Parties agree that this Settlement Agreement is in the public interest when considered as a whole. If the Commission declines to approve this Settlement Agreement in its entirety, then any Party may withdraw from the Settlement Agreement without penalty or obligation.

6. The Parties represent that the terms of this Settlement Agreement are based upon full and accurate information known as of the date this Settlement Agreement is executed. If, after execution, either Party is made aware of information that conflicts, nullifies, or is otherwise materially different than that information upon which this Settlement Agreement is based, either Party may withdraw from the Settlement Agreement with written notice to the other Party.

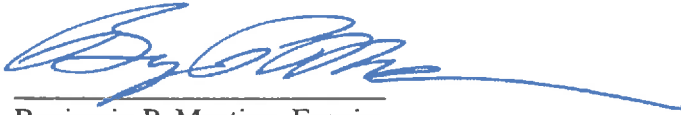
7. This Settlement Agreement shall be interpreted according to South Carolina law.

8. Each Party acknowledges its consent and agreement to this Settlement Agreement by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any Party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement.

[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]



Representing the South Carolina Office of Regulatory Staff



Benjamin P. Mustian, Esquire

Alexander W. Knowles, Esquire

South Carolina Office of Regulatory Staff

1401 Main St., Ste. 900

Columbia, SC 29201

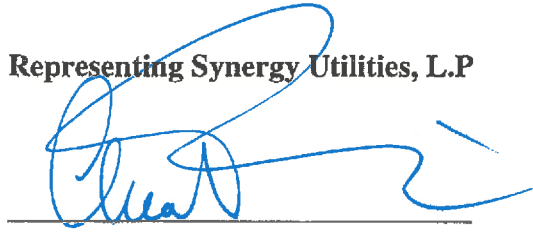
Phone: (803) 737-0898

(803) 737-0889

Email: bmustian@ors.sc.gov

aknowles@ors.sc.gov

Representing Synergy Utilities, L.P



Charles L.A. Terreni, Esquire
Terreni Law Firm, LLC
1508 Lady Street
Columbia, SC 29201
Phone: (803) 771-7228
Email: charles.terreni@terrenilaw.com

Scott Elliott, Esquire
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
Phone: (803) 771-0555
Email: selliott@elliottlaw.us


Representing South Carolina Water Utilities, Inc.



Charles L.A. Terreni, Esquire
Terreni Law Firm, LLC
1508 Lady Street
Columbia, SC 29201
Phone: (803) 771-7228
Email: charles.terreni@terrenilaw.com

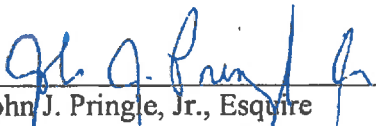
Scott Elliott, Esquire
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
Phone: (803) 771-0555
Email: selliot@elliottlaw.us

Representing Northwood Estates Homeowners Association, Inc.


Skyler B. Hutto, Esquire
Williams & Williams
1281 Russell Street
Orangeburg, SC 29118
Phone: (803) 534-5218
Email: skyler@williamsattys.com

102741

Representing the City of Orangeburg



John J. Pringle, Jr., Esquire
Adams and Reese LLP
1501 Main Street, 5th Floor
Columbia, SC 29211-1547
Phone: (803) 343-1270
Email: jack.pringle@arlaw.com